EXHIBIT "F"

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
Case Number: AS2011-416

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In The Matter of the Arbitration

Between

Local 210 WAREHOUSE AND
PRODUCTION EMPLOYEES UNION,
AFL-CIO
AND
TRUSTEES OF THE LOCAL 210 PENSION FUND

"LOCAL 210"

-and-

ENVIRONMENTAL SERVICES, INC.

"ESI"

MOTION TO DISMISS

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ARBITRATOR'S RULING ON MOTION

BEFORE: Randi E. Lowitt, Esq., Arbitrator

APPEARANCES BY LETTER, ONLY:

For ESI
Glenn B. Gruder, Esq.
CertilmanBalin

For the Union
Kieran X. Bastible, Esq.
Meyer Suozzi

Pursuant to the procedures set forth in the collective bargaining agreement of the above-captioned parties and the Rules of Procedure of the State of New York Public Employment Relations Board ("NYPERB"), the above named arbitrator was designated by the State of New York Public Employment Relations Board to hear and decide the matter in dispute between the above-identified parties.

The designation letter was dated January 12, 2012, by NYPERB and received by the arbitrator thereafter. By email dated January 19, 2012, this Arbitrator notified the parties of her designation and inquired about scheduling. At that time, Local 210 was represented by Rick Iaccarino of Barnes, Iaccarino & Shepherd and ESI was represented by Douglas Rowe of Certilman Balin. The timeline below is all based on emails sent between and among the arbitrator, counsel for Local 210 and counsel for ESI. Mention of the Union refers to Union counsel, whomever it was at the time of the email. Mention of the ESI or the employer refers to Employer's counsel. Mention of "me" or "I" refers to the arbitrator.

On January 25, 2012, I followed up on my email of January 19, 2012 and reached out to the parties regarding scheduling. Dates were offered and emails exchanged among all involved.

On March 13, 2012, the Union informed me that this arbitration was part of an agreed-to settlement of a Federal action, something about which I had no prior knowledge; additionally, the Union accused ESI of stalling.

On March 14, 2012, a copy of the Stipulation of Discontinuance with Prejudice was provided to me by Mr. Iaccarino, as filed in the E.D.N.Y. October 26, 2011. On March 14, 2012, Mr. Rowe said ESI was available to go forward on August 1, 2012.

On March 15 2012, the Union said it was also available to go forward on August 1, 2012; ESI being likewise available, a hearing notice is sent out to the parties for an August 1, 2012 hearing date.

On July 13, 2012, an email is received by me from Elise Feldman, Esq. of Meyer Suozzi, saying that the firm had been retained by Local 210 (replacing Barnes, Iaccarino & Shepherd) and requesting an adjournment of the August 1, 2012, for time to prepare its case. With no objection from ESI, the adjournment is granted.

On July 30, 2012, upon my return from vacation, an inquiry regarding rescheduling is sent to the parties by me, as well as a late cancellation bill to the Union, which bill was paid by the Union.

On August 2, 2012 a hearing notice is sent out for the agreed upon new hearing date of November 1, 2012.

On October 4, 2012, ESI requests an adjournment and Local 210 does not object. The adjournment is granted. According to the request, the parties are engaging in document exchange. By email, I tell the Union to reach out to me to reschedule, upon receipt of and review of the information it has requested from ESI.

On January 25, 2013, Union counsel sends an email regarding the delay and my not having heard from her since October 2012, noting business and personal issues she has had, noting the documents she is preparing pursuant to ESI's document request, and noting the documents she has received from ESI. Ms. Feldman asks to reschedule. Ms. Kathleen Deninger, ESI's counsel's legal assistant, is in touch and informs Local 210 counsel (Ms. Feldman) and me that ESI's counsel, Mr. Glenn Gruder, has had emergency open-heart surgery and is out of the office for a period of time. I tell Union counsel, Ms. Feldman, to be in touch with me when she and Mr. Gruder are able to "regroup."

On March 25, 2013, Union counsel, Ms. Feldman, again asks to reschedule. I tell Union counsel and ESI counsel that I will be in touch with them on April 3, 2013, when I am back in my office, regarding prospective dates.

On April 3, 2013, I offer dates to the parties, which dates are not acceptable to ESI.

On April 4, 2013, I offer additional dates, in September and October 2013. The parties are both available on October 24, 2013 and October 30, 2013.

On April 6, 2013, I send out a hearing notice for the above 2 dates.

On April 15, Union counsel emails me and ESI's counsel that October is too far away and accuses ESI of delay.

Between April 16, 2013 and April 22, 2013 there are numerous emails between the parties and me regarding the alleged "delay."

On April 23, 2013, the Union confirms that the October dates will be acceptable and will remain on the calendar.

On September 24, 2013 an email is sent by Kieran Bastible, Esq. of Meyer Suozzi, stating that he is the new attorney on the case (replacing Ms. Feldman) and asking to adjourn the first of the two October 2013 dates, keeping the second date, October 30, 2013, on the calendar. ESI does not object. The adjournment is granted.

On October 18, 2013, counsel for ESI and Local 210 jointly ask to adjourn the October 30 date, based on their discussions and hope of possible resolution. The adjournment is granted and a late cancellation bill is sent to both parties on October 22, 2013. ESI pays its portion.

On December 5, 2013, I wrote to both parties asking about rescheduling. There was no response.

On December 13, 2013, I wrote to both parties asking about rescheduling. Mr. Gruder responded saying the parties are still engaging in discussion; there is no response from Mr. Bastible, either confirming, denying or asking to reschedule.

On January 3, 2014, I wrote to both parties asking about rescheduling. There was no response.

On January 14, 2014, I wrote to both parties asking about rescheduling. There was no response.

On February 14, 2014, I wrote to both parties asking about rescheduling. There was no response.

On February 21, 2014, I wrote to both parties inquiring about the case. There was no response.

On March 28, 2014, I wrote to both parties asking about rescheduling. Mr. Bastible and I, separately, corresponded regarding my email and my inquiry as to when I might receive payment for the late cancellation. Mr. Bastible wrote that he would call Mr. Gruder regarding "his view on arbitration," and Mr. Bastible asked me to provide dates. Mr. Bastible also agrees to check on payment of the bill.

On March 31, 2014, I notified the parties that I could offer dates for rescheduling, in September or October 2014.

On April 1, 2014, Mr. Bastible said that timeframe, of September or October 2014, would be acceptable for rescheduling. I tell him to speak to Mr. Gruder; he said he would.

On April 21, 2014, I corresponded with Mr. Bastible, asking about payment and scheduling and if he had spoken to Mr. Gruder.

On April 25, 2014, Mr. Bastible emailed me about payment, but did not respond to my query about scheduling or speaking to Mr. Gruder.

On April 30, 2014, I again correspond with Mr. Bastible and ask Mr. Bastible if he and Mr. Gruder have spoken about scheduling, and confirm to him the address for payment to be sent. Mr. Bastible informs me that he believes needs to proceed with scheduling the arbitration and will know for sure within the next week.

On May 4, 2014, I correspond with Mr. Bastible tell Mr. Bastible that I have received payment and again ask about scheduling. I receive no response from Mr. Bastible, and hear nothing from him or Mr. Gruder between this email of May 4, 2014 (which did not include Mr. Gruder, but which alluded to the March 28, 2014 interchange wherein Mr. Bastible said he would reach out to Mr. Gruder and the April 30, 2014 interchange wherein Mr. Bastible stated that he believed the case would need to proceed) and my next email, of August 5, 2014.

On August 5, 2014, I send an email to both parties and to ask where the parties stand regarding scheduling. Mr. Gruder responds saying he has not heard from Mr. Bastible in months; Mr. Bastible does not respond.

On September 15, 2014, I send an email telling the parties I am placing the case in my inactive file and will close it out shortly. I receive no response from either party.

On June 10, 2015, I receive an email from Mr. Bastible, asking to recalendar the case on behalf of Local 210. I offer to hold a conference call with Mr. Gruder and Mr. Bastible.

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On June 18, 2015, Mr. Gruder makes his motion to deny Mr. Bastible's request, orally.

On June 24, 2015, a calendar is set for letters from the parties. Mr. Gruder is to send his demand by August 28, 2015 and Mr. Bastible to respond by September 18, 2015. I offer more time to both parties, if necessary.

On August 28, 2015, Mr. Gruder's demand is received.

On August 29, 2015, Mr. Bastible is reminded that his due date is September 18, 2015, and that if he needs additional time to respond, please advise.

On September 10, 2015, Mr. Bastible asks for additional time, until October 2, 2015. That request is granted. Mr. Bastible responds by October 2, 2015.

On October 30, 2015, Mr. Gruder responds to Mr. Bastible's response.

On November 2, 2015, I am in receipt of hard copies of all papers.

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POSITIONS OF THE PARTIES

ESI asserts that "(o)ver twenty months after the last scheduled date for arbitration (October 30, 2013), on June 10, 2015, the aforementioned request to re-open was made by the Union. Thus, between April 2014 (if not earlier), until June 10, 2015, through no fault of ESI, this matter was delayed solely as a result of the Union's failure to contact you, which was a period of approximately fourteen months." (ESI Motion Letter, August 28, 2105, p. 2). ESI argues that, to permit the matter to be re-opened, would be prejudicial and detrimental to ESI. "...ESI has been prejudiced because a critical material witness, Dominic Formisano, Jr., the former Union President, is no longer employed by the Union and, therefore, may not be able to testify on behalf of ESI at the arbitration. In addition, since the Stipulation of Discontinuance was entered, almost four years has passed. The passage of time by itself has affected the memories of the witnesses...." (Id., p. 3).

ESI also argues against the Union's assertion that ESI should have reached out to the Arbitrator to reschedule the case. "There is no reason, nor any incentive, for ESI to notify the Union to re-open the arbitration. But here, more importantly, the Arbitrator notified the Union's counsel on two (2) separate dates regarding the lack of activity and the Union failed to respond. .. It is ESI's position that, by failing to respond to the Arbitrator's email dated September 15, 2014 for nine months, the Union has neglected to prosecute, or has abandoned, the arbitration." (ESI Motion Letter, October 29, 2015, pp. 2-3). ESI argues that, having not responded to any of my emails, and my having closed out the case, the Union's case was as good as dismissed for a perceived failure to prosecute. At the very least, ESI avers that the Union should have to file a new complaint, thereby triggering a new statute of limitations regarding the claim originally at issue.

Local 210 contends that in spite of my email notification to the Union and ESI that I was placing the case in my inactive file and closing it out shortly thereafter, that "...email was the last communication we had with you before my June 10, 2015 letter requesting that this matter be placed back on your 'active' calendar. No notice – formal or informal – of the closing of the arbitration was ever received by me (nor, I believe, was issued), and Attorney Gruder presents no such notice. Thus Attorney Gruder's claim that '(f)or a period of nine months, (the arbitration) was closed' ...is simply not accurate." (Union Motion Letter, October 2, 2015, pp. 1-2, attribution omitted).

In it's response to ESI's motion, the Union correctly notes that the doctrine of *laches* is not applicable. ESI had argued it in it's initial letter but, upon receipt of the Union's response, noted that the Union was correct in it's assessment, a point which ESI conceded in it's October 29, 2015 letter. Moreover, the Union disagrees with ESI's contention that, because a witness may be unavailable, ESI would be prejudiced. "This is a classic 'bean counter' case.... Thus, this is largely a documentary evidence based proceeding, based on documents and records in the sole control of ESI. ...The relevant contract and records will speak for themselves and were gathered by Attorney Gruder himself. Thus, Attorney Gruder's claim that '(t)he passage of time itself has affected the memory of witnesses' rings hollow and poses no basis for dismissal of the proceeding." (Id., pp. 3-4, citation omitted).

The Union maintains that it "timely commenced its action against ESI, has not engaged in any undue delay, and ESI has suffered no prejudice at all. ...Furthermore, had Attorney Gruder been genuinely concerned by the prejudice about which he now speculates, he could have contacted you himself, and requested that hearing dates be scheduled. But, Attorney Gruder did not do so...." (Id., p. 5). The Union firmly asserts that it has adequately and appropriately pursued this case, and, at the very least, has pursued it as well as or as much as ESI has.

The Union also argues against any ESI argument asserting Statute of Limitations. "Here, the Demand for Arbitration was served and filed prior to December 8, 2011, as evidenced by the Billing Invoice issued by the Statute (sic) of New York Public Employment Relations Board. ...The audit which is the subject of the arbitration covers the period from January 1, 2006 through September 30, 2011. Attorney Gruder correctly notes that

New York's statute of limitations for breach of contract claims is six years. Thus, all years covered by the audit are properly before you in this arbitration. Attorney Gruder's treatment of the statute of limitations as a 'moving target' – rather than as fixed in time as of the date of service of the Demand for Arbitration – is without basis and his statute of limitations defense also fails." (Id., p. 6).

Therefore, the Union demands that the Motion be denied and that the case be re-calendared.

DECISION ON THE MOTION

This arbitration was brought forth because the parties entered into a settlement of a Federal action, dated October 26, 2011. Arbitration is to be, by its very nature, an expeditious method of resolution. This case was by no means expeditious. It is well settled that arbitration is supposed to be a quick, inexpensive method of resolving disputes. Here, there was definitely a failure on the part of the Union to proceed to and through arbitration. The Union did not pursue the issue to arbitration in a quick or appropriate manner. The Union should have proceeded with this grievance years ago. The Employer is not estopped from raising this issue prior to proceeding with any arbitration, as it has.

The Union is correct that, after my September 14, 2014 email, there was no further contact from me; more importantly, and more tellingly, there was NO contact from the Union, for a long time before and for a long time thereafter. The Union was on notice of what was going to occur but, as with the prior emails I sent, there was no response at all. Put quite simply, there was no interaction by or from Mr. Bastible or the Union from April 30, 2014 until Mr. Bastible sent the request to re-calendar in June 2015, notwithstanding my emails to him and notwithstanding my statement regarding closing out the case. Whether or not I sent an email actually notifying the Union of the exact date on which I closed out the file, thereby removing it from my inactive file, is almost irrelevant. The Union failed to pursue this arbitration, either by sending an email (at any time from May 2014 to June 2015) saying the Union wished to place the case back on the calendar, or by sending an email in response to my myriad emails, which were sent because the Union had previously asked to reschedule. I emailed the parties for months and months, and despite and in the face of my constant email inquiries, there was no response from the Union. This case was and has been closed. ESI counsel is correct in noting that.

RULING

1. The motion is granted.
2. The request to re-calendar is denied.
3. The case will be reopened again only upon order of a court of competent jurisdiction.

Randi E. Lowitt
Arbitrator

Dated: December 2, 2015

AFFIRMATION

STATE OF NEW YORK)

COUNTY OF NEW YORK)

I, RANDI E. LOWITT, affirm that I am the individual described in and who executed the foregoing instrument which is my Opinion and Award.

Randi E. Lowitt
Arbitrator

Dated: December 2, 2015